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ABSTRACT

Our society has long adhered to a double standard of justice, one for male offenders and another for females. This system survived with little controversy mainly due to the small female prison population. But recent events have drawn attention to not only the issue of female criminality, but to the treatment of women while incarcerated. Female criminality has traditionally been associated with sexual offenses, shoplifting, false pretense, fraud, and victim precipitated violence. While many believed that the feminist movement would increase and expand criminality, it seems that increases in female arrest can better be attributed to a criminal justice backlash, reflecting a harder stance toward women by the male dominated criminal justice system. Within penal institutions, examples abound of female inmate abuse at the hands of male enforcers of the system. The major factor making females more susceptible to abuse is sexual discrimination. In addition, among female offenders who are punished, racial bias is in evidence. The black female is doubly discriminated against as a result of her gender and her color. For discrimination against all female offenders to cease, better female facilities and a new awareness among criminal justice practitioners are necessary. (Author/GC)

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WOMEN, CRIME AND THE MALE DOMINATED CRIMINAL JUSTICE SYSTEM

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WOMEN, CRIME, AND THE MALE DOMINATED CRIMINAL JUSTICE SYSTEM

Our society has long adhered to a double standard of justice, one for male offenders and yet another for females. And while females have certainly been discriminated against in many social situations, they have traditionally been spared the pains of imprisonment. In fact, female offenders have normally been subjected to a judicial policy of "reverse discrimination" resulting in fewer women being arrested, convicted or incarcerated. The reason for this is attributed to the protective attitude man, especially those possessing social power, have for women. Accordingly Western cultures have been reluctant to submit females to the same corrective measures applied to males. Some contend that men suffer from a self-deception concerning women, an attitude which is internalized during the socialization process and is used to rationalize the subordinate role females are assigned in our social order. Hence males are hesitant to credit females with such "masculine" actions as crime. It also follows that many males are hesitant to admit that they have been victimized by a female criminal thus contributing to the image that females are less criminal than males (Engels, 1902).

This system survived with little controversy mainly due to the small female prison populations. But recently a number of spectacular events has drawn considerable attention to not only the issue of female criminality, but to her treatment while institutionalized as well. This study focuses on both the emerging phenomenon of

increased female criminality and the long-awaited investigation into the treatment of female offenders.

Two factors contributed to this phenomenon. The riots and protests of the 1960's provided the catalyst for increased female participation in aggressive and rebellious behavior. This and the resulting Women's Liberation Movement led to increased awareness of the female's plight in our society. The nation saw middle and upper class females being beaten violently at the 1968 Chicago convention riot as well as viewing women being gassed and harrassed at subsequent protests and rallies up to and including the 1971 May Day demonstration in Washington, D.C. The Kent State and Jackson State incidents probably best illustrated the decline of the sexual double standard regarding the administering of justice when male legal control agents (police, national guard...) fired indiscriminately into student populations consisting of both sexes (Eisenhower, 1969).

Many feel that the female's increased consciousness has contributed to the rise in female criminality (Hacker, 1972). This coupled with increased severity in criminal adjudication has led to the current situation. According to the FBI "Crime Index" female offenders in 1976 accounted for 16 percent of the nationwide total. Over time (1960-1974) they registered an 108.8 percent increase over their male counterparts whose increase was 23.7 percent (Kelley, 1977). Moreover, female offenders have also accounted for a proportionately higher number of arrests for general crimes resulting in an 81 percent increase in the federal prison population within the past five years. Yet, while female criminality has apparently increased markedly over the past

fifteen years it still comes nowhere near that for their male counterparts. Although the feminist movement may have contributed in part to this phenomenon, a more positive outcome of the movement has been the increased public attention drawn toward the poor institutional environment long suffered by the incarcerated female. Few cared about the female inmate mainly because of the small numbers involved and the race and social class of these persons. Then, as now, most are poor Blacks, Hispanic or Indian.

Female criminality has long been associated with sexual offenses, theft such as shoplifting (boosters and snitches), false pretense, fraud or uttering, and victim precipitated violence such as assault and murder. And while many have warned that the Women's Rights Movement would increase female criminality in both the volume of crimes committed and by expanding the nature of female criminality to include those acts once thought to be masculine, no conclusive evidence exists to support this contentions. Instead the FBIs Uniform Crime Report increases in female arrest can best be attributed to a criminal justice backlash to the Equal Rights Amendment (ERA) movement with a number of criminal justice practitioners over-reacting to the Women's Rights Movement arresting and indicting more female offenders than in the past.

These increases, then, better reflect a harder stance by the male dominated criminal justice system directed toward the traditional female offender and does not support a new female crime trend. Interestingly, Miller's (1975) study on "Violence by Youth Gangs and Youth Groups as a Crime Problem in Major American Cities" reports no significant increase in female gang activity in the 1970s from

that reported during the 1950's and 1960's. Other studies on female suicides and homicides in New England and increased criminality by non-urban females in Virginia drew similar conclusions: that female criminality has not increased noticably in the 1970's.

These findings only give added strength to the charges of an extreme polarization between "acceptable" females in our society, notably those perceived as being worthy of being protected by the male dominated criminal justice system, and the "unacceptable" females, those who are considered despicable, tarnished and unworthy by society. Kingsley Davis (1937) talked of this sexual caste system in his structural/functional analysis of prostitution suggesting that society creates this structural dilemma making it work through a self-fulfilling prophecy, one where legal controls play a critical role. Besides, much evidence exist indicating that many male criminal justice practitioners such as police, attorneys, jailers and guards come to expect special favors from those "unacceptable" female offenders as if it was their due. Here we are confronted with "judicial sexploitation" at its worst.

Much of the problems between the male dominated criminal justice system and females, whether they be victims or offenders, seems to focus about the issue of rape. The victims of either street or institutional rape is usually psychologically battered, harrassed and humiliated by the criminal justice practitioners they encounter. The street victim has the option of not reporting the crime while the female inmate rape victim has little recourse seeing that often the rapist is a member of the criminal justice aparatus itself.

Granted not all heterosexual staff/inmate sexploitation directly involved forcible rape like in the Joan Little case. Nonetheless most of these situations do involve forced seduction which many would argue is the same as rape. The exception involves prostitutes who may use sex for special considerations from the police or correctional personnel. Yet when force is involved, regardless if the offender is a known prostitute or not, this constitutes rape. Apparently the practice of forcing sexual favors from female inmates for normal institutional services such as showers, decent meals, sheets and the like is quite prevalent in our nation's correctional facilities.

The cases of Marie Hill and Joan Little best reflect the plight of the poor black female before the law, both being from North Carolina, the state with the highest incarceration rate (207/100,000). Marie had the dubious distinction of being the youngest person to sit on North Carolina's death row. When 17, in 1968, she was convicted of the murder of a white grocer, William E. Strum, whose body was found in the back room of his store in Rocky Mount. According to the Commission for Racial Justice (December 1974), Marie was arrested and forced to write a confession without benefit of legal counsel. Later she pleaded "not guilty" to the charges. Marie's background, being black, poor, and having a juvenile record, weighted heavily against her while Strum's reputation as a gambling house operator and molester of young girls apparently was of little consequence to the prosecutor, jury, or judge. Today Marie is serving a life sentence although she continues to voice her innocence. Even this judicial turnaround came about only after the U.S. Supreme Court reviewed

the case and sent it back to North Carolina for reconsideration (Lane, 1974).

Joan Little's cause gained national attention forcing the State of North Carolina to give her a fairer trial than usually is offered poor, black defendants (Garfinkel, 1949). Ms. Little was being held in the Beufort County jail awaiting an appeal on a breaking and entering and larceny conviction. She was in her third month at the temporary holding facility when in August 1974 she was charged with the ice-pick slaying of the 62 year old white jailer, Clarence Alligood. Ms. Little freely conceded to an altercation with Mr. Alligood which arose when the jailer forced her to perform an unnatural oral sex act. The ice pick belonged to the county and was found in the jailer's hand. Alligood was found in Ms. Little's cell on the bunk unclothed from the waist down. He had emitted seminal fluid shortly prior to his death. Ms. Little was successful in her self-defense trial but only after a chance of venue and the aid of civil rights groups (Bond, 1975).

Examples abound of female inmate abuse at the hands of the primarily male criminal justice system. North Carolina has been plagued with other female correctional issues including other inmates being sexually molested, complaints about compulsory pelvic examinations and a riot at the Correctional Center for Women (Women's Prison). On June 15, 1975 a third of the inmates (150) at Women's Prison went on strike over the institution's living, working, and treatment conditions. Most notable of these complaints was the compulsory eight-hour work shift in the hot laundry, sewing shop,

and the lack of effective treatment programs and poor health service facilities. Within the next four days 19 inmates and 16 guards were slightly injured. Instead of viewing the inmate complaints as viable the then Secretary of Corrections, David Jones, placed the blame on "outside agitators": "I think the cause was outside activists, liberals, radicals, and my favorite word, fools, because I think they are all the same" (Asheville Citizen, June 26, 1975). Concerning the inmates' grievances Jones said he was not sympathetic with the inmates' complaint concerning the laundry heat which reaches 120 degrees in the summer. He replied that construction workers and others "in the free world" have to work in 120 degree temperatures to make a living. Of course, he failed to mention these people in the "free world" are paid for their labors.

What makes a female inmate more susceptible to these abuses? The main factor is sexual discrimination, better known as "sexploitation". The criminal justice system including law enforcement, the judiciary and corrections is dominated by male practitioners and subsequent masculine philosophy. Thus, our dual prison system ends up being "separate but masculine". Furthermore, women's prisons are less specialized than are male facilities forcing together inmates with a wide array of offenses and backgrounds often placing first offenders in the same population with hardcore criminals. The current situation was precluded by a precedent over a century old. In the 1860's reform for women offenders stressed sexual morality and sobriety. Treatment involved teaching female inmates their appropriate social role--housekeeping, laundry, cooking, and the like. Most female

institutions went a step further exploiting their inmates by providing a cheap labor force to do institutional laundry, sewing, and other housekeeping tasks. Hence, while most male inmates face the problem of too little to do, their female counterparts are often overworked. The most crucial consequence of the female penal philosophy is that it tends to reinforce the female's inferior and dependent role in society, thereby further weakening their self resolve and self respect making them all more susceptible to continual exploitation both within the institution and on the outside, once released.

This precarious social situation places the female inmate at a tremendous disadvantage. Due to their conditioning to be dependent upon males and to compete for male recognition, the female inmate finds it hard to adjust to the uni-sexual institutional environment (Cohen, 1966). Once adapted to the institutional setting female inmates tend to generate more intense subcultural relationships than do male inmates. Yet, by the same token they seem more capable of transferring their dependency from females, a condition determined by the artificial uni-sexual institution population, to males, once released. The point illustrated here is that most of the problems facing female inmates, whether in jail or prison populations, is brought about mostly by social-structural situations and not by anything inherent in females themselves.

Given the tendency of our society not to punish most female offenders, a look at those who eventually are incarcerated indicates a racial bias. Granted, this racial bias extends to male offenders as well. However, when considering the inverse relationship which exists between female criminal adjudication and the discriminatory

racial factor a situation of social double jeopardy emerges. That is, the black female is often denied the extra-legal protection associated with the female status on the one hand, while at the same time being disproportionately subjected to harsher penal sanctions on the other (Ward, 1967). Being black only serves to exacerbate the female's already dependent social role while tending to intensify her sense of negative self-worth. The additional and common factor of being poor only makes matters worse.

Clearly the female offender, especially the poor and non-white offender, is discriminated against according to our existing extra-legal judicial double standard. While most females may benefit from these judicial practices, they place considerable psychological and physiological strain on those females who are incarcerated. The challenge for the future are better female facilities and a new feminist awareness among criminal justice practitioners. Certainly the first objective at hand should be to renovate our traditional "separate but masculine" system of judicial practice. This would help resolve a number of problems afflicting our judicial system from the handling of rape cases, jail sexploitation, female penal institution exploitation, and the mainly ineffective rehabilitation, resocizlization, and reintegration programs for female offenders.

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